



October 8, 2002

Ms. Ashley D. Fourn  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2002-5700

Dear Ms. Fourn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170313.

The Tarrant County District Attorney's Office (the "district attorney") received a request for a copy of a specified case number. You state that you have produced some responsive information to the requestor. You claim, however, that a portion of the remaining requested information is not subject to the Public Information Act (the "Act"). You also claim that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we address your claim that a portion of the submitted information is not subject to the Act. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Gov't Code § 552.003; *see also* Open Records Decision No. 513 (1988). However, we note that if an investigation began before any information was submitted to the grand jury and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information relating to the investigation is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by a governmental body is submitted to a grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the governmental body.

See Open Records Decision No. 513 (1988). You indicate that one of the submitted documents constitutes a one-page summary that reflects the secret proceedings of the grand jury involved in this matter. You state that this record was prepared and collected at the express direction of the grand jury. Thus, we understand you to assert that this document is in the constructive possession of the grand jury because the district attorney holds the document as an agent of the grand jury. See Gov't Code §§ 552.003(B), .0035(a); see also Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). Accordingly, we conclude that the document that we have marked is not subject to disclosure under the Act.

Next, we address your claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup> We note that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. See Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. See *id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The definition of CHRI does not include driving history record information maintained by DPS under Subchapter C of Chapter 521 of the Transportation Code. Accordingly, we conclude that the district attorney must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. See *id.*; see also Gov't Code § 411.106(b), .082(2) (defining criminal history record information).

We note that information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the*

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure by other statutes.

*Press*, 489 U.S. 749 (1989). You state that the information at issue contains criminal history compilations concerning the requestor. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation would generally implicate the requestor's right to privacy to the extent that it includes arrests and investigations where the requestor is a suspect in a case. However, in this instance, since the information at issue pertains solely to the requestor, we conclude that the district attorney may not withhold any portion of such information from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

However, you also claim that portions of this remaining submitted information are excepted from disclosure as attorney work product pursuant to section 552.111 of the Government Code. We note that a governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. *See* Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See id.* at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. Based on our review of your arguments and the remaining information at issue, we conclude that you have failed to demonstrate how any portion of this information constitutes attorney work product. Accordingly, we conclude that the district attorney may not withhold any portion of the remaining information from disclosure as attorney work product under section 552.111 of the Government Code.

In summary, one document that we have marked is not subject to disclosure under the Act. The district attorney must withhold from disclosure the document that we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The district attorney must release the remaining submitted information to the requestor.<sup>2</sup>

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<sup>2</sup> We note that the submitted information includes the requestor's driver's license and social security numbers. As the laws protecting these types of information from disclosure are designed to protect an individual's privacy interest, the requestor has a special right of access to her own information. *See* Gov't Code § 552.023.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

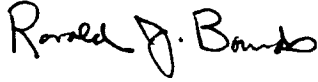
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized "R" and "B".

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 170313

Enc. Marked documents

cc: Ms. Denise Thomas  
1102 Vine Street #1  
Denton, Texas 76209  
(w/o enclosures)